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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

SHELDON LOCKETT; MICHELLE
 DAVIS; and CLYDE DAVIS

Plaintiffs,

vs.

COUNTY OF LOS ANGELES, a
 public entity; LOS ANGELES
 COUNTY SHERIFF'S
 DEPARTMENT; a law enforcement
 agency; former SHERIFF JIM
 MCDONNELL; MIZRAIN ORREGO,
 a Deputy Los Angeles County Sheriff;
 SAMUEL ALDAMA, a Deputy Los
 Angeles County Sheriff; and DOES 1
 through 100, inclusive,

Defendants.

CASE NO.: 2:18-cv-5838-PJW
 [Assigned to Hon. Patrick J. Walsh]

**DEFENDANTS' NOTICE OF
 MOTION AND MOTION IN
 LIMINE #2 OF 5 TO EXCLUDE
 EVIDENCE OR TESTIMONY
 REGARDING DEPUTY GANGS**

[Proposed order filed concurrently]

Final Pretrial Conference
 Hearing Date: November 15, 2021
 Time: 3:00 p.m.
 Courtroom: 7A

Jury Trial:
 Date: December 14, 2021
 Time: 8:30 a.m.

Complaint Filed:

**TO UNITED STATES DISTRICT JUDGE DALE S. FISCHER, ALL
 PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on November 15, 2021 at 3:00 p.m., or as
 soon thereafter as counsel may be heard, Defendants County of Los Angeles, Los
 Angeles County Sheriff's Department and Los Angeles County Sheriff's
 Department Deputy Samuel Aldama, will, and hereby do, move the Court for the
 following order *in limine* that the following evidence be excluded from trial in this
 case:

1 Questioning, evidence, witnesses, testimony and or reference of any kind
 2 and in any manner to alleged deputy gang(s), gang affiliation(s) and/or tattoos
 3 possessed by Sheriff's Deputies.

4 The grounds for this motion are the *Federal Rules of Evidence* 403, 404(b),
 5 407, 801 and 803(8), as well as the legal authorities cited herein.

6 This Motion is based upon this Notice, the Memorandum of Points and
 7 Authorities attached hereto, the Declaration of Andrew C. Pongracz and the
 8 Exhibits attached thereto and submitted herewith, upon all documents on file in
 9 this case, and upon such oral and documentary evidence which may be received
 10 and considered by this Court when ruling on this Motion.

11 CONFERENCE OF COUNSEL

12 On September 21, 2021, the parties began to meet and confer in advance of a
 13 Rule 16 pretrial conference of counsel and continued at various dates and times
 14 thereafter, including multiple video conferences, letters outlining this and other
 15 motions in limine, emails, etc. The final correspondence regarding Defendants'
 16 proposed motions in limine was dated October 11, 2021. All counsel participated
 17 and the undersigned counsel for Defendant Samuel Aldama certifies that the
 18 following motion and related documents reflect compliance with the FRCP, local
 19 rules, and this Court's pretrial orders.

20 Respectfully Submitted,

21 Dated: October 26, 2021

SEKI, NISHIMURA & WATASE, LLP

22 By: /s/ Andrew C. Pongracz
 23 ANDREW C. PONGRACZ
 24 GILBERT M. NISHIMURA
 25 Attorneys for Defendant,
 26 SAMUEL ALDAMA
 27
 28

MEMORANDUM OF LAW

I. INTRODUCTION

This is a civil rights case brought by Plaintiff Sheldon Lockett alleging excessive force by Los Angeles County Sheriff's Deputy Samuel Aldama amounting to a violation of Plaintiff's 4th/14th Amendment rights and a *Monell* claim against the County of Los Angeles ("County" or "COLA") and Los Angeles County Sheriff's Department ("LASD"). *See* Dkt. 1; Dkt. 41 (Second Amended Complaint ("SAC")) 7:23-8:26.¹

a. The Lockett Incident

On January 15, 2016, Deputy Samuel Aldama and Deputy Mizrain Orrego were on duty, working as a patrol unit out of Compton Sheriff's Station when they responded to a radio call regarding a drive-by shooting that had just occurred. *See generally* Dkt. 56, p.2 (Court order denying Defendants' Motion to Dismiss SAC, summarizing case); Dkt. 180, pp.2-3 (Order granting motion to dismiss Deputy Orrego as defendant); Dkt. 208, pp.2:1-4:2 (Order denying Deputy Aldama's motion for summary judgment/summary adjudication). In the course of their response to the attempted murder call, Sheriff's deputies Aldama and Orrego observed Plaintiff Sheldon Lockett as he stood in front of a friend's house with two other individuals (his friend and his friend's sister. *Id.*

Aldama and Orrego drove up to the three individuals, one of whom was Sheldon Lockett. *Id.* The parties' description of this interaction varies dramatically, but it is undisputed that upon seeing the deputies, Mr. Lockett ran away. *Id.* A short pursuit followed. *Id.* Eventually, Mr. Lockett trapped himself in a fenced back yard. *Id.* Deputy Aldama and others admit to using force against Mr. Lockett: the dispute is whether they used reasonable force to overcome Lockett's resistance

¹ The operative complaint is Plaintiff's Second Amended Complaint for Damages, Dkt. 41, filed November 16, 2018.

1 as Defendants claim, or whether the force was unprovoked and unreasonable as
2 Plaintiff contends.

3 Deputy Aldama admits to punching Lockett and using the force described in
4 his written reports that he wrote immediately upon the conclusion of the event. *See*
5 Dkt. 172-2, pp. 8-9, facts 21-22 (admitting same).

6 Once Mr. Lockett was detained, the victim was brought to the location and
7 positively identified Lockett as the shooter. *See* Dkt. 138-6 (Incident Report by
8 LASD deputies Ruiz and Martinez detailing arrest of Plaintiff and basis for same,
9 including identification of Plaintiff by eyewitness). Mr. Lockett was arrested and
10 charged with attempted murder. *Id.* Mr. Lockett spent some seven months in jail
11 until his criminal case was dismissed. Dkt. 208, p.3:21-27.

12 **b. This Litigation**

13 On July 3, 2018, Mr. Lockett filed this lawsuit, asserting excessive force and
14 Search and Seizure claims against Deputy Aldama. Dkt. 1. Mr. Lockett alleges that
15 on January 15, 2016, Deputy Samuel Aldama, *inter alia*, used excessive force
16 against Plaintiff Sheldon Lockett when detaining him after a foot pursuit. *Id.*
17 Lockett also alleges that Aldama's use of force was motivated by racial animus.²
18 The operative Second Amended Complaint ("SAC") asserts a claim for excessive
19 force against Deputy Aldama and a *Monell* claim against the County of Los
20 Angeles and Los Angeles County Sheriff's Department.

21 **II. FACTS RELEVANT TO THIS MOTION**

22 The topic of cliques of deputies within the Los Angeles County Sheriff's
23 Department has been a persistent theme in Plaintiff's filings with the Court and
24

25 ² Excessive force claims under Section 1983 do not contain a scienter requirement.
26 *See* Ninth Circuit Model Civil Instruction 9.3, 9.25. The intent of the deputy is
27 irrelevant in evaluating the objective reasonableness of a deputy's use of force.
28 *Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 405 (1997)
("Section 1983 itself 'contains no state-of-mind requirement independent of that
necessary to state a violation' of the underlying federal right... In any § 1983 suit,
however, the plaintiff must establish the state of mind required to prove the
underlying violation." (*quoting Daniels v. Williams*, 474 U.S. 327, 330(1986)))

disclosures to counsel under FRCP 26. Throughout this case, Plaintiff's counsel has disclosed multiple news articles and other documents addressing the topic. Earlier this year the RAND Corporation issued a report on subgroups of deputies within the LASD that was commissioned by the Los Angeles County Counsel.

In their pretrial filings, counsel for Plaintiff have made it clear that they intend to make trial in this matter about "Deputy Gangs" using the RAND study, news articles, and evidence from other cases to move the focus away from the objective reasonableness of force used by deputies on Mr. Lockett, and towards salacious allegations of "Deputy Gangs" including a contention that deputies having tattoos or affiliating in any way with deputy groups implies, the participation in illegal activities, violations of civil rights, or other wrongful conduct.

This incident involved four sheriff's deputies and Mr. Lockett: five people. The joint witness list contains 191 witnesses. Dkt. 301. Similarly, there is a discrete set of documents related to the force incident at issue in this case. The exhibit list contains 310 purported exhibits. Dkt. 294. Without going through these approximately 500 witnesses and exhibits, they are almost all regarding deputy cliques, subgroups, and other varied constructions of such topics.

The topic of Deputy cliques, subgroups, tattoos, "Deputy Gangs" and other connotations of illicit groups and actions within the Los Angeles County Sheriff's Department is unfairly prejudicial to the determination of this case and should be excluded from trial, either in whole or to such an extent that it does not subsume the rest of Mr. Lockett's claims.

III. SCOPE OF REQUESTED ORDER

To exclude any and all facts, evidence, witnesses, testimony and or reference of any kind and in any manner to alleged deputy gang(s), gang affiliation(s) and/or tattoos from trial. Alternatively, to exclude such evidence from the excessive force

1 phase of trial as set forth in Defendants’ motion to bifurcate and to strictly
 2 prescribe its use in any subsequent phase. *See* Dkt. 292.

3 **IV. ARGUMENT**

4 **a. Motions *in Limine* Generally**

5 Motions *in limine* are recognized as a proper pretrial request, both in practice
 6 and by case law. *See, Ohler v. United States*, 529 U.S. 753, 758 (2000); *United*
 7 *States v. Cook*, 608 F.2d 1175, 1186 (9th Cir. 1979). Authority for these motions
 8 is also derived from the Court’s inherent power to manage the course of trials. *See,*
 9 *Luce v. United States*, 469 U.S. 38, 41 (1984). As the Ninth Circuit succinctly
 10 explains, motions *in limine* “allow parties to resolve evidentiary disputes ahead of
 11 trial, without first having to present potentially prejudicial evidence in front of a
 12 jury.” *Brodit v. Cabra*, 350 F.3d 985, 1004–05 (9th Cir.2003) (citations omitted).
 13 Like all motions, the parties are required to meet and confer prior to filing a motion
 14 in limine in order to discuss potential resolutions to the perceived issue without
 15 requiring the Court to intervene. *See* CACD Local Rule 7-3. Counsel for the parties
 16 complied with their obligations under Local Rule 7-3 through a series of meet and
 17 confer efforts beginning on June 8, 2020 via a Zoom videoconference.

18 **b. Evidence Regarding Deputy Gangs, Deputy Tattoos, Or The** 19 **Alleged Actions of Deputies Who Fit Such Descriptions Would Be** 20 **Unfairly Prejudicial To Deputy Aldama And COLA/LASD**

21 Evidence of “deputy gangs” or alleged bad acts committed by tattooed
 22 deputies would be unfairly prejudicial to Defendants and should be excluded under
 23 *Federal Rule of Evidence* Rule 403. The most basic reason for Plaintiff to
 24 introduce such evidence is to impugn the character of Deputy Aldama, the County
 25 of LA and the Sheriff’s Department. Doing so creates a permission structure for a
 26 jury to punish the defendants in this case based on an overall moral culpability of
 27 law enforcement and the Sheriff’s Department based on real or perceived wrongs
 28 and injustices that are totally unrelated to Deputy Aldama’s use of force on Mr.

1 Lockett. Evidence admitted for this purpose is unfairly prejudicial to Defendants’
 2 right to have an impartial jury decide the disputed issues of fact in this case.

3 Rule of Evidence 403 states that evidence may be excluded if its probative
 4 value is substantially outweighed by the danger of unfair prejudice, misleading the
 5 jury, or waste of time. Fed. R. Evid. 403; *see Duran*, 221 F.3d at 1133 (“Even if
 6 all four conditions [of Rule 404(b)] are met, the evidence may still be excluded if
 7 under Rule 403, the probative value of the evidence is substantially outweighed by
 8 the danger of unfair prejudice.”). *See also Allen v. City of Los Angeles*, 2012 WL
 9 1641712, *3 (C.D. Cal. 2012) (following *Maddox* and excluding evidence of other
 10 civil litigation, personnel complaints, unrelated allegations of bad acts, and
 11 reference to internal affairs investigations involving defendant officers).

12 It is not hyperbole to suggest that a jury seated in this case could be
 13 receptive to the suggestion that the Sheriff’s Department and those within its ranks
 14 have, historically, evaded scrutiny of their actions or accountability when those
 15 actions violate the rights of others. This case does not exist in a vacuum, and
 16 invoking widely-held beliefs and emotions about law enforcement and the
 17 injustices of the past would invite a jury to decide this case based on prejudice and
 18 preconceived notions about the Los Angeles County Sheriff’s Department rather
 19 than the facts at issue. Weighing any probative value other bad acts may have in
 20 this case against the extreme prejudice such evidence could evoke, the Court
 21 should exclude it from trial both under Rule 404 and Rule 403.

22 **c. Evidence of “Deputy Gangs” and Tattooed Deputies Is Irrelevant**

23 In order for evidence to be relevant, it must have some “tendency to make
 24 the existence of any fact that is of consequence to the determination of the action
 25 more probable or less probable than it would be without the evidence.” Fed. R.
 26 Evid. 401. Evidence of other unrelated incidents is clearly irrelevant, because the
 27 reasonableness of the force used on Plaintiff has nothing to do with other force
 28 incidents or conduct.

1 Such evidence can come in many forms, whether investigated by the
 2 Sheriff's Department, the subject of separate litigation, investigated by outside
 3 agencies, or even studied by the County or an outside body like the RAND
 4 Corporation. Insofar as acts by deputies other than Deputy Aldama are concerned,
 5 there simply is no basis for arguing that another person's use of force at another
 6 time tends to make it more or less probable that Deputy Aldama used excessive
 7 force in this case.

8 If the jury determines that Deputy Aldama did use excessive force, then the
 9 Jury must decide whether the County's training and supervision, policies and
 10 procedures, or other conduct was a substantial factor in causing Deputy Aldama's
 11 excessive force against Mr. Lockett. Again, unrelated incidents and the myriad
 12 unique facts and circumstances of each one (incidents that may or may not bear
 13 any relation to this incident) do not make any fact of consequence more or less
 14 probable.

15 **d. Such Evidence Is Character Evidence That Should Be Excluded**
 16 **Under Rule 404**

17 *Federal Rule of Evidence* 404(a) provides, in pertinent part:

18 “(A) Evidence of a person's character or a trait of character is not
 19 admissible for the purpose of proving action in conformity therewith on a
 20 particular occasion.” Fed. R. Evid. 404(a).

21 It is anticipated that Plaintiff will seek to introduce such evidence of assorted
 22 media reports of “deputy gangs” or tattooed deputies, references to other lawsuits
 23 alleging excessive force, etc. as classic character evidence of Deputy Aldama, the
 24 Sheriff's Department, or both. Plaintiff's offer of proof would be that introducing
 25 evidence of bad acts by groups of deputies and/or deputies with tattoos, showing
 26 Deputy Aldama is a member in a deputy subgroup or has a tattoo, and asking the
 27 jury to rely on that evidence when considering the use of force in this case was
 28

objectively unreasonable. *See Cohn v. Papke*, 655 F.2d 191, 193 (9th Cir. 1981).

This is exactly what is prohibited by Rule 404.

Federal Rule of Evidence 404(b) provides in pertinent part that “evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith.” *Gates v. Rivera*, 993 F.2d 697 (9th Cir. 1993) (holding that character evidence is normally not admissible in a civil rights case and that past conduct of the officer defendant did not bear upon the issue of the reasonableness of the officer’s conduct).³

The only conceivable relevance of prior or subsequent incidents involving Defendant Aldama would be to suggest that he acted in conformity with that other conduct: exactly what is impermissible under FRE 404(b). The more likely reason to introduce evidence of other wrongs, uses of force, etc. would be to engender bias against Deputy Aldama when considering the force at issue here.

Plaintiff’s use of unrelated bad acts to prove his case here does not stand up to scrutiny. Plaintiff’s rationale for introducing conduct unrelated to Mr. Lockett (whether done specifically by Deputy Aldama, or by any deputy whose group affiliation or choice of tattoo fits a certain description) can be broken down into the following logic:

- 1) Some prior or subsequent bad act occurred,
- 2) The involved deputy is/was a member of a subgroup or carries a particular tattoo,

³ While not citable authority, the case of *Engman v. City of Ontario*, WL 2463178 (C.D. Cal. 2011) is also instructive on this issue. (“if the only purpose for seeking to introduce [evidence of other instances in which the defendant officer employed excessive force or acted violently] is to show the defendant's character or propensity as a violent or quarrelsome individual, or that defendant has a penchant to use more force than is reasonably necessary, admission of the evidence would violate Rule 404(b)'s ban against other act evidence to show character.”) (quoting Martin A. Schwartz, Section 1983 Litigation: Federal Evidence § 2.6[B] (4th ed. 2010 Supp.)).

1 3) Subgroup status or tattoo status was a substantial factor in the
2 occurrence of that unrelated bad act,

3 4) Deputy Aldama belongs to the same or an analogous subgroup (likely
4 labeling it a “gang” for maximum emotional resonance) or has a
5 particular tattoo, *ergo*

6 5) the force Deputy Aldama used against Mr. Lockett must have been
7 unreasonable because of his membership in a group or having of a tattoo

8 The logic of Plaintiff’s argument is erroneous: substituting correlation
9 (membership or tattoo status) with causation (that because of membership or tattoo
10 status) the bad act is more likely to have occurred.

11 Introducing evidence of bad acts, particularly acts of excessive force, by
12 Deputy Aldama or others, with or without the overtones of deputy gangs, tattoos,
13 or other nefarious themes, seeks to impugn the character of Defendant Aldama by
14 mere association, and would create unfair prejudice in the jury. Plaintiffs should
15 not be allowed to introduce or refer to evidence or testimony regarding Deputy
16 cliques, subgroups, gangs, tattoos, or related facts to imply anything about the
17 reasonableness of Deputy Aldama’s force against Mr. Lockett.

18 **e. This Evidence Will Require Mini-Trials And The Consumption of**
19 **Judicial Resources On Tangential Issues**

20 Even if evidence of Deputy Aldama’s, or other Deputies’ prior or
21 subsequent acts of alleged misconduct were at all relevant, and they are not,
22 evidence, argument or reference to such acts should also be excluded because the
23 probative value of such evidence “is substantially outweighed by the danger of one
24 or more of the following: unfair prejudice, confusion of the issues, misleading the
25 jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”
26 *Fed.R.Evid. 403*. “‘Unfair prejudice’ within [the rule’s] context means an undue
27 tendency to suggest decision on an improper basis....” *Papke*, 655 F.2d at 194
28 (*citing Fed.R.Evid. 403*).

1 Evidence of other alleged acts of misconduct is not probative of whether or
2 not Deputy Aldama used excessive force in this case, or if such excessive force
3 was caused by the act(s) or omission(s) of the County/LASD. In addition, such
4 evidence presents a substantial danger of undue prejudice, confusion of the issues,
5 and misleading the jury; the introduction of other alleged acts of misconduct by
6 Defendant Aldama or other LASD deputies invites the jury impermissibly to
7 punish Defendants for those other alleged acts of misconduct rather than decide
8 liability based on facts specific to Plaintiff's incident. Similarly, in light of
9 the lack of probative value of such evidence, its introduction would constitute
10 undue delay and a waste of time, requiring mini-trials as to the circumstances and
11 propriety of multiple unrelated incidents.

12 The potential prejudice, waste of time and resources, and unfair prejudice
13 would not just be limited to the use of such evidence during the jury's
14 consideration of Plaintiff's excessive force claim (the first phase as sought in
15 Defendants' Motion to Bifurcate (Dkt. 292). There is a conceivable scope of
16 evidence that may have some relevance to Plaintiff's *Monell* claim that involves
17 deputies that have tattoos or belong to a subgroup, but that does not and should not
18 allow the wholesale use of such evidence in a *Monell* phase (Defendants' proposed
19 second phase).

20 Even if there is a way to vet the various types and sources of evidence to
21 ensure its reliability and probative value to this case, the search for and
22 introduction of such evidence will necessitate mini-trials and evidentiary hearings
23 with respect to the facts surrounding third party reports such as the recent RAND
24 study, unrelated lawsuits, uses of force, administrative investigations of other
25 LASD personnel, lengthy cross-examinations of witnesses related to other
26 incidents, all of which will expand the scope and duration of trial.

27 To the extent that the evidence is based on reports containing particularized
28 findings, such evidence presents a substantial risk of prejudice, insinuating that the

1 jury should ultimately reach the same conclusions presented in the reports or
2 documents. *See Gilchrest v. Slemons Imports, Inc.*, 803 F.2d 1488, 1500 (9th Cir.
3 1986) (recognizing authority to exclude report containing findings that would
4 likely impair a jury's ability to independently evaluate evidence).

5 **V. CONCLUSION**

6 For the foregoing reasons, Defendant Samuel Aldama, the County of Los
7 Angeles and the Los Angeles County Sheriff's Department respectfully request
8 this Court issue the requested order *in limine* and instruct counsel for all parties to
9 inform their various witnesses and clients of such order in advance of their
10 testimony at trial in this matter.

11 Dated: October 26, 2021

12 SEKI, NISHIMURA & WATSE, LLP

13 /S/ Andrew C. Pongracz⁴

14 By: _____
15 Andrew C. Pongracz
16 Attorneys for Defendant Samuel Aldama
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27 ⁴ Counsel for Deputy Aldama file this motion on behalf of all Defendants pursuant
28 to the agreement of counsel and written authority from co-counsel to file this
motion on their behalf.